

(1990) 04 GAU CK 0010

Gauhati High Court

Case No: M.A. (F) No. 110 of 1986

Smt. Sneha Rani Deb

APPELLANT

Vs

Sri Aswini Kumar Deb and
Others

RESPONDENT

Date of Decision: April 3, 1990

Acts Referred:

- Civil Procedure Code, 1908 (CPC) - Order 39 Rule 1, Order 39 Rule 2
- Lunacy Act, 1912 - Section 37, 62

Citation: (1990) 1 GLR 395

Hon'ble Judges: S.N. Phukan, J

Bench: Single Bench

Advocate: S.K. Sen and A. Sarma, for the Appellant; B.M. Mahanta, G.N. Sahewalla, A.K. Goswami and N. Choudhury, for the Respondent

Final Decision: Dismissed

Judgement

S.N. Phukan, J.

This appeal is directed against the order of the learned District Judge, Karimganj, passed under the provisions of Lunacy Act, 1912, for short, "the Act".

2. Briefly stated the facts are as follows:

The Petitioner herein filed a petition before the learned District Judge under the provisions of the Act praying inter alia for a direction for inquiry under Section 62 of the Act on the ground that her husband Sri Ashini Kumar Deb. opposite party No. 1 herein is a lunatic person and is unable to manage the affairs of his properties. In the petition before the learned District Judge it was inter alia alleged that there was reasonable apprehension in the mind of the Petitioner that though opposite party No. 1 is not a violent lunatic, but as he was not in a position to understand anything and incapable of managing his own property he may alienate the properties in favour of others. It has further been alleged that their eldest son,

opposite party No. 3 is very clever and had a motive of getting the property of said Aswini Kumar Deb transferred in his name or in the name of his brother in laws and others, may get some documents executed by said Aswini Kumar Deb. The learned District Judge vide order dated 26.5.86 passed in the said application asked the learned Assistant District Judge for holding a preliminary enquiry to ascertain as to whether Aswini Kumar Deb was a lunatic person. It may be mentioned that the present Petitioner, that is, the wife of Aswini Kumar Deb is aged 68 years and they have got 6 (six) daughters and 4 (four) sons. The learned Assistant District Judge examined Aswini Kumar Deb by putting questions and came to the finding that he is a normal person. On the basis of the said report the learned District Judge by the impugned order dated 25.8.88 rejected the petition on the ground that Aswini Kumar Deb was not an insane person. The order also indicates that the learned District Judge examined Aswini Kumar Deb and he accepted the observation of the learned Assistant District Judge.

3. The petition was resisted both by Ashwini Kumar Deb and his eldest son, opposite party No. 3. It has been alleged that being instigated by one son of Ashwini Kumar Deb, opposite party No. 4 the present petition has been filed. The ground for instigation as alleged was that the said son, namely opposite party No. 4 was an extravagant in character and though a firm was started by Ashwini Kumar Deb with two sons, namely opposite party Nos. 3 and 4 the business failed because of the above activities.

4. I have heard learned Counsel for the parties.

5. The main contention of Mr. Sen, learned Counsel for the Appellant is that the impugned order is violative of Section 62 of the Act, which inter alia provides that the District court may by order direct an inquisition for the purpose of ascertaining whether such person is of unsound mind and incapable of managing himself and his affairs. According to the learned Counsel by delegating this power to the learned Assistant District Judge the learned Trial court has erred in law Section 62 of the Act runs as follows:

62. Power of District Court to institute inquisition as to persons alleged to be lunatic--

Whenever any person not subject to the jurisdiction of any of the Courts mentioned in Section 37 is possessed of property and is alleged to be a lunatic, the District Court, within whose jurisdiction such person is residing may, upon application, by order direct an inquisition for the purpose of ascertaining whether such person is of unsound mind and incapable of managing himself and his affairs.

On reading the section I am of the opinion that before an inquisition is directed the Court must be satisfied that there was a prima facie case, more particularly, when the factum of lunacy is disputed. In the case in hand, by the impugned order though it is not properly worded, the learned District Judge rejected the prayer of inquisition

in the petition filed before the learned trial court. Except the averment made in the petition no other evidence was adduced to show that prima facie Ashwini Kumar Deb was a lunatic person. In fact, the first petition was also not supported by an affidavit and no evidence was adduced.

6. I am, therefore, of the opinion that the Appellant herein failed to make out a prima facie case ordering an inquisition in the case in hand. In this connection I may also state that both the learned trial courts below after examination of Ashwini Kumar Deb was the opinion that he was not a lunatic person. I may also refer to the order passed by learned Single Judge of this Court in Misc. Case No. 182 of 1987 in connection with the present appeal. This Misc. case was registered on a petition filed under Order 39, Rules 1 and 2 CPC seeking injunction by the present Appellant. While disposing of the said petition the learned Single Judge observed as follows:

The applicant is present in the Court and from what I have seen of him it cannot be said that he is insane. It is, however, stated by Shri Sen that the Petitioner is under undue influence of his eldest son Shri Ajit Kumar Deb and it is apprehended by the Appellant that all the properties belonging to the Petitioner may be transferred to the aforesaid Ajit Kumar Dev.

Thus, from the personal examination of Shri Ashwini Kumar Deb learned Single Judge was also the view that the person was not insane.

7. The contention of Mr. Sen that the impugned order is violative of Section 62 of the Act has no force inasmuch as the learned District Judge directed the learned Assistant District Judge only to make a preliminary enquiry and his final order is not based on that report alone, That apart, as stated above, the present Appellant did not adduce any evidence whatsoever to show that the person was insane. I may also add that before the learned trial court Sri Ashwini Kumar Deb in his objection clearly stated that he is a renowned businessman of Karimganj town and the present petition has been filed maliciously.

For the reasons stated above, I find no force in the present appeal and accordingly it is dismissed. No costs.